

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Pleasanton, Kansas)

DOCKET FILE COPY ORIGINAL

MM Docket No. 98-9
RM-9216

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Topeka, Iola and Emporia, Kansas)

MM Docket No. 98-13
RM-9212

To: Chief, Allocations Branch
Mass Media Bureau

MOTION FOR DECISION

Shawnee Broadcasting Corporation ("Shawnee") hereby requests that the Chief, Allocations Branch (the "Chief") adopt and release a Report and Order, or two Reports and Orders if more appropriate, in the referenced proceedings at the earliest opportunity. There is no conflict among the parties, and the proceedings have been waiting action for more than two (2) years. In support of this request, Shawnee submits the following:

Background

MM Docket No. 98-9: Pleasanton, Kansas

1. By petition dated December 16, 1997, the City of Pleasanton, Kansas, petitioned the Commission to initiate a rulemaking proceeding to allot Channel 268C3 to Pleasanton, Kansas, as a first local aural transmission service. On January 21, 1998, the Chief adopted a "Notice of Proposed Rule Making" proposing the allotment of Channel

268C3 at Pleasanton.¹ The Chief set March 23, 1998, as the deadline for comments and counter-proposals. The Chief set April 7, 1998, as the deadline for reply comments.

2. In comments dated March 19, 1998, the City of Pleasanton affirmed its expression of interest in applying for and constructing a new FM broadcast station at Pleasanton, Kansas.

MM Docket No. 98-13: Topeka, Kansas

3. On December 29, 1997, Shawnee filed a "Petition for Rulemaking" requesting amendment of the FM Table of Allotments to substitute Channel 257C3 for Channel 257A at Topeka, Kansas, and requesting modification of the license for KWIC(FM), Topeka, Kansas, (Facility Id. No. 39997) to specify operation on Channel 257C3.

4. In order to effect that amendment to the FM Table of Allotments and the modification of the KWIC license, Shawnee also proposed the substitution of Channel 268A for Channel 257A at Iola, Kansas; the substitution of Channel 241A for Channel 258A at Emporia, Kansas, and the corresponding modifications of the licenses for radio stations KIKS-FM, Iola, Kansas, (Facility Id. No. 29046) and KRWV(FM), Emporia, Kansas, (Facility Id. No. 41542).

5. On January 28, 1999, the Chief adopted a "Notice of Proposed Rule Making and Order to Show Cause" proposing the substitution of Channel 257C3 for Channel 257A at Topeka; the substitution of Channel 268A for Channel 257A at Iola; the substitution of Channel 241A for Channel 258A at Emporia, and the modification of the license for KWIC(FM) to specify operation on Channel 257C3. The Chief also ordered the licensees of KIKS-FM and KRWV(FM) to show cause why their licenses should not be

¹ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Pleasanton, Kansas) (MM Docket No. 98-9, RM-9216), DA 98-136, 13 FCC Rcd. 2153 (Released January 30, 1998).*

modified to specify operation on Channels 268A and 241A, respectively.² The Chief set March 30, 1998, as the deadline for comments and counter-proposals. The Chief set April 14, 1998, as the deadline for reply comments.

6. There were no comments in opposition to the upgrade of KWIC(FM). Nor were any counter-proposals submitted by any third parties. In "Comments of Shawnee Broadcasting Corporation" dated March 20, 1998, Shawnee affirmed its expression of interest in applying for and constructing upgraded KWIC(FM) facilities.

Mutual Exclusivity

7. MM Docket Nos. 98-9 and 98-13 are mutually exclusive proceedings, although not initially acknowledged by the Chief, because Section 73.207 of the Rules does not permit the simultaneous allotment of Channel 268C3 at Pleasanton, Kansas, and of Channel 268A at Iola, Kansas.

Resolution of Mutual Exclusivity

8. In the "Reply Comments of Shawnee Broadcasting Corporation" dated April 3, 1998, and filed in MM Docket No. 98-9, Shawnee demonstrated, with appropriate technical support, that alternate non-mutually exclusive Class C3 and Class A Channels could be allotted at Pleasanton, Kansas, to eliminate mutual exclusivity. A copy of the April 1998 technical statement of Clarence Beverage is attached for reference.

9. Mr. Beverage demonstrated that, as of April 1998, either Channel 229C3, 229A, 233A or 253A could be allotted at Pleasanton. Mr. Beverage has recently confirmed that either of these four channels can still be allotted at Pleasanton, thereby permitting the

² *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Topeka, Iola and Emporia, Kansas) (MM Docket No. 98-13, RM-9212), DA 98-179, 13 FCC Rcd. 2463 (Released February 6, 1998).*

substitution of Channel 268A at Iola, Kansas. See attached letter of Clarence Beverage dated September 14, 2000.

The City of Pleasanton Does Not Object

10. The City of Pleasanton, Kansas, did not object to the allotment of any alternate channel at Pleasanton, in lieu of Channel 268C3.

No Other Party Objects

11. The licensees of radio stations KIKS-FM, Iola, Kansas, and KRWV(FM), Emporia, Kansas, are parties to these proceedings. Iola Broadcasting, Inc., licensee of KIKS-FM, filed, in MM Docket No. 98-13, "Initial Comments" dated March 30, 1998, stating that it had "no objections" to the proposed substitution of channels at Iola, Kansas, provided the substitute channel met the minimum distance separation requirements and provided the licensee obtained reimbursement of reasonable expenses incurred in changing channels. The licensee of KRWV(FM) did not file any comments or reply comments in these proceedings. Therefore, the licensee of KRWV(FM) can be deemed to have also consented to the modification of the license for its radio station.

12. The only other party to these proceedings is Innovative Broadcasting Corporation ("Innovative"), licensee of KSEK(FM), Channel 256A, Girard, Kansas. On March 25, 1998, Innovative filed, in MM Docket No. 98-13, "Comments of Innovative Broadcasting Corporation." Therein, Innovative supported the Shawnee proposal, stating that the substitution of Channel 268A for Channel 257A at Iola, Kansas, would permit KSEK to increase power from 3 kW to 6 kW and thereby maximize power for the station.

13. On April 10, 1998, Innovative filed, in MM Docket No. 98-13, "Reply Comments of Innovative Broadcasting Corporation" supporting the alternate channel allotments at Pleasanton, Kansas, proposed by Shawnee.

14. There have been no other filings in either docketed proceeding by any other person or entity either in opposition to the proposals to allot a new FM Channel at Pleasanton and to upgrade KWIC or in opposition to Shawnee's proposed resolution of mutual exclusivity by allotting an alternate channel at Pleasanton, Kansas.

The Proceedings are Ripe for Decision

15. MM Docket Nos. 98-9 and 98-13 have been ripe for decision since April 1998. Because of the resolution proposed by Shawnee – which remains viable today – there is no conflict or adversity among the parties to the proceedings. The proceedings can be promptly resolved by allotting any of four (4) alternate FM channels at Pleasanton and by upgrading KWIC as originally proposed by Shawnee.

16. After almost two and one-half years, the public interest is served by prompt and expeditious action herein. Further delay disserves the public interest by further postponing improvement in service to the public by both KWIC and KSEK, and inauguration of a new first local service at Pleasanton.

17. Furthermore, the Federal Aviation Administration ("FAA") has issued a no-hazard determination for the site for the upgraded KWIC facilities. That no-hazard is conditioned upon submission to the FCC of an application for construction permit. Prompt action in the rulemaking proceedings will permit Sunrise to tender the application for construction permit and avoid expiration of the FAA's no-hazard determination.

WHEREFORE, Shawnee requests the Chief to adopt and release appropriate orders (1) substituting Channel 257C3 for Channel 257A at Topeka, Kansas; (2) substituting Channel 268A for Channel 257A at Iola, Kansas; (3) substituting Channel 241A for Channel 258A at Emporia, Kansas; (4) modifying the license for KWIC(FM), Topeka, Kansas, to specify operation on Channel 257C3; (5) modifying the license for

KIKS-FM, Iola, Kansas, to specify operation on Channel 268A; (6) modifying the license for KRWV(FM), Emporia, Kansas to specify operation on Channel 241A; (7) adding either Channel 229C3, 229A, 233A or 253A at Pleasanton, Kansas, as a first aural transmission service, and (8) terminating MM Docket Nos. 98-9 and 98-13.

Respectfully submitted,

**DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP**

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By: *Harold K. McCombs*
Lewis J. Paper
Harold K. McCombs, Jr.

September 18, 2000

**REPLY COMMENTS BY
SHAWNEE BROADCASTING CORP.
KWIC(FM) TOPEKA, KANSAS
IN THE MATTER OF
NOTICE OF PROPOSED RULE MAKING
PROPOSED CHANNEL 268C3
PLEASANTON, KANSAS**

APRIL 1998

**REPLY COMMENTS BY
SHAWNEE BROADCASTING CORP.
KWIC(FM) TOPEKA, KANSAS
IN THE MATTER OF
NOTICE OF PROPOSED RULE MAKING
PROPOSED CHANNEL 268C3
PLEASANTON, KANSAS**

APRIL 1998

SUMMARY

The following statement has been prepared on behalf of **Shawnee Broadcasting Corp. ("Shawnee")**, licensee of KWIC(FM), Topeka, Kansas. **Shawnee** has filed a Petition for Rule Making (RM-9212) to amend the Table of Allotments as set forth in MM Docket No. 98-13, which is summarized as follows:

<u>City</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
Topeka, KS	257A	257C3
Iola, KS	257A	268A
Emporia, KS	258A	241A

The Petition for Rule Making (RM-9216) filed by the city of Pleasanton to add Channel 268C3 at Pleasanton, Kansas has been transformed by the Commission into a Notice of Proposed Rule Making (RM-9216) but is mutually exclusive with **Shawnee's** earlier filed proposed allotment of Channel 268A to Iola, Kansas. No other channel is suitable as a substitute for Channel 268A at Iola, Kansas.

The purpose of this statement is to identify alternate, non-mutually exclusive, channels for use at Pleasanton, Kansas and to demonstrate the public interest benefits associated with a Pleasanton alternate allotment channel.

SELECTION OF ALTERNATE ALLOTMENT CHANNELS - PLEASANTON, KANSAS

A search has been made to determine if an alternate channel(s) is available for Pleasanton, Kansas which

would meet the Commission's city grade service requirements to Pleasanton. The following channels appear to meet all applicable FCC criteria.

Channel 253A at N.L. 38° 10' 00"
W.L. 94° 50' 00"

Channel 229A at N.L. 38° 12' 00"
W.L. 94° 50' 00"

Channel 233A at N.L. 38° 11' 20"
W.L. 94° 47' 27"

Channel 229C3 at N.L. 38° 13' 55"
W.L. 94° 57' 30"

Allocation studies for each channel are shown on Tables I-IV, respectively. It is noted that the U.S. Atlas city reference coordinates for Pleasanton, Kansas are N.L. 38° 10' 30", W.L. 94° 42' 42". All Class A site locations specified herein are within the required 16.2 km Class A city grade reference distance, and the Class C3 allotment coordinates are within the 23.2 km Class C3 city grade reference distance. It is further noted that the city of Pleasanton sits in a valley with a typical elevation AMSL of 260 meters, while all alternate allotment sites (except Channel 233A) are west of the city at higher natural elevations ranging from 280-310 meters and possibly better suited to serving all of Linn County.

PUBLIC INTEREST BENEFIT

There is a public interest benefit associated with implementation of Shawnee's Rule Making proposal when compared to the Pleasanton proposal in terms of area and population gains, as shown below:

	60 dBu Contour	
	Population <u>Persons</u>	Area <u>Sq. km</u>
<u>Facility - Shawnee Proposal</u>		
Ch 257A - Topeka, KS (KWIC License)	171,737	2,341
Ch 257C3 - Topeka, KS (Proposed)	<u>195,257</u>	<u>4,684</u>
Gain	23,520	2,343

Ch 257A - Iola, KS (KIKS License)	18,176	1,780
Ch 268A - Iola, KS (Proposed)	<u>29,176</u>	<u>2,517</u>
Gain	11,000	737
Ch 258A - Emporia, KS (KRWV CP)	36,646	2,510
Ch 241A - Emporia, KS (Proposed)	<u>36,702</u>	<u>2,578</u>
Gain	56	68
Ch 258A - Girard, KS (3 kW)	38,061	1,876
Ch 258A - Girard, KS (6 kW)	<u>40,587</u>	<u>2,561</u>
Gain	2,526	685
Total Gain	37,102 Persons	3,833 Square kM

Facility - Pleasanton, Kansas

Ch 268C3 **34,241 Persons** **4,757 Square km**

Therefore, the **Shawnee** proposal would provide additional 60 dBu service to 2,861 more persons than the **Pleasanton** proposal. However, since alternate channels are available, the Commission need not make this decision. The public is better serviced by implementing the **Shawnee** counterproposal and an alternative, non-mutually exclusive channel for **Pleasanton** so that the radio needs of all four affected communities in the two proceedings are met.

To demonstrate this, the area and population data for alternate Channel 229C3 at Pleasanton have been computed as follows:

Channel 229C3 60 dBu Contour

Area: 4,786 square km
Population: 30,670 persons

The proposed 70 dBu and 60 dBu contours for Channel 229C3 at Pleasanton are shown on Figure 1, attached while these same contours are shown on Figure 2 for Channel 229A.

The area and population for Channel 229A has also been computed as a worst case (class A) alternative. The proposed data for this channel are:

Channel 229A 60 dBu Contour

Area: 2,494 Square kM
Population: 12,098 persons

It is noted that the 1990 U. S. Census population for Pleasanton, Kansas is 1,231 persons and the population for Linn County is 8,254 persons. Virtually all of Linn County is served by the alternate, Channel 229A, 60 dBu primary contour.

The final best case alternative becomes:

	Total Gain	
	<u>Population</u>	<u>Area</u>
Shawnee Proposal	37,102 persons	3,833 square kM
Pleasanton C3 (Ch 229)	<u>34,241</u> persons	<u>4,757</u> square kM
Total Gain	71,343 persons	8,590 square kM

or the worst case alternative becomes:

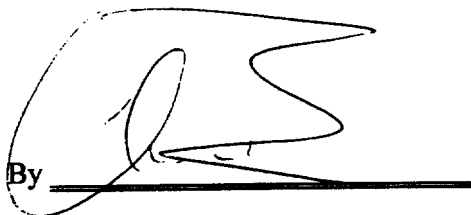
	Total Gain	
	<u>Population</u>	<u>Area</u>
Shawnee Proposal	37,102 persons	3,833 square kM
Pleasanton A (Ch 229)	<u>12,098</u> persons	<u>2,481</u> square kM
Total Gain	49,200 persons	6,314 square kM

Either proposal is significantly superior to the Pleasanton, Kansas proposal for Channel 268C3, which would serve 34,241 persons in an area of 4,757 square kilometers but would not allow any area and population gains for any of the three communities included in the MM Docket No. 98-13 proceeding.

CONCLUSION

Shawnee offers an alternate set of channels that may be allotted to Pleasanton, Kansas in place of Channel 268C3 proposed by the petitioner. The C3 alternate proposal would allow the greatest total gain in area and population and would also provide four existing FM stations the ability to increase their area and population served while allowing a new service to Pleasanton, Linn County, Kansas.


The foregoing was prepared on behalf of **Shawnee Broadcasting Corp.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By 

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 2 nd day of April, 1998,

 NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT. 15, 2002

TABLE I
ALLOCATION STUDY CHANNEL 253A PLEASANTON, KANSAS
APRIL 1998

Search of Channel 253A6 (98.5 MHz), at N. 38 10 0, W. 94 50 0.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
=====									
ALC	Kansas City	KS	251	C	U	105.1	95.0	16.8°	10.1
KUDL	Kansas City	KS	251	C	L	105.1	95.0	16.8°	10.1
KUDL	Kansas City	KS	251	C	L	95.1	95.0	7.6°	0.1
KUDL	Kansas City	KS	251	C	L	105.1	95.0	16.8°	10.1
ALC	Abilene	KS	253	C1	U	219.4	200.0	288.6°	19.4
KSAJFM	Abilene	KS	253	C1	L	219.4	200.0	288.6°	19.4
ALC	Warsaw	MO	253	A	U	130.0	115.0	81.4°	15.0
NEW	Warsaw	MO	253	A	C	130.0	115.0	81.4°	15.0
ALC	Tulsa	OK	253	C	U	246.4	226.0	207.1°	20.4
KVOOFM	Tulsa	OK	253	C	L	246.4	226.0	207.1°	20.4
ALC	Leavenworth	KS	255	C	U	102.7	95.0	12.3°	7.7
KQRCFM	Leavenworth	KS	255	C	L	102.7	95.0	12.3°	7.7

TABLE II
ALLOCATION STUDY CHANNEL 229A PLEASANTON, KANSAS
APRIL 1998

Search of Channel 229A6 (93.7 MHz), at N. 38 12 0, W. 94 50 0.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Kansas City	MO	227	C	U	94.9	95.0	17.4°	-0.0
KMXV	Kansas City	MO	227	C	L	94.9	95.0	17.4°	-0.0
ALC	Parsons	KS	228	A	U	101.4	72.0	200.3°	29.4
KLKCFM	Parsons	KS	228	A	L	101.4	72.0	200.3°	29.4
ALC	Horton	KS	229	C3	U	163.6	142.0	345.5°	21.6
KAIRFM	Horton	KS	229	C3	L	164.0	142.0	345.3°	22.0
ALC	Webb City	MO	230	C2	U	110.1	106.0	164.8°	4.1
KJMK	Webb City	MO	230	C2	L	110.1	106.0	164.8°	4.1
ALC	Kansas City	KS	231	C	U	94.9	95.0	17.4°	-0.0
KFKFFM	Kansas City	KS	231	C	L	94.9	95.0	17.4°	-0.0

TABLE III
ALLOCATION STUDY CHANNEL 233A PLEASANTON, KANSAS
APRIL 1998

Search of Channel 233A6 (94.5 MHz), at N. 38 11 20, W. 94 47 27.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
=====									
ALC	Kansas City	KS	231	C	U	95.1	95.0	15.1°	0.0
KFKFFM	Kansas City	KS	231	C	L	95.1	95.0	15.1°	0.0
ALC	Humboldt	KS	232	C3	V	89.2	89.0	229.2°	0.2
NEW	Humboldt	KS	232	C3	A	91.9	89.0	219.4°	2.9
NEW	Humboldt	KS	232	C3	A	90.2	89.0	231.6°	1.2
ALC	Junction City	KS	233	C1	U	203.1	200.0	296.8°	3.1
KJCKFM	Junction City	KS	233	C1	L	203.1	200.0	296.8°	3.1
ALC	Springfield	MO	234	C	U	173.5	165.0	128.1°	8.5
KTTSFM	Springfield	MO	234	C	L	190.9	165.0	126.1°	25.9
ALC	Kansas City	MO	235	C	U	99.5	95.0	10.5°	4.5
KCMOFM	Kansas City	MO	235	C	L	99.5	95.0	10.5°	4.5

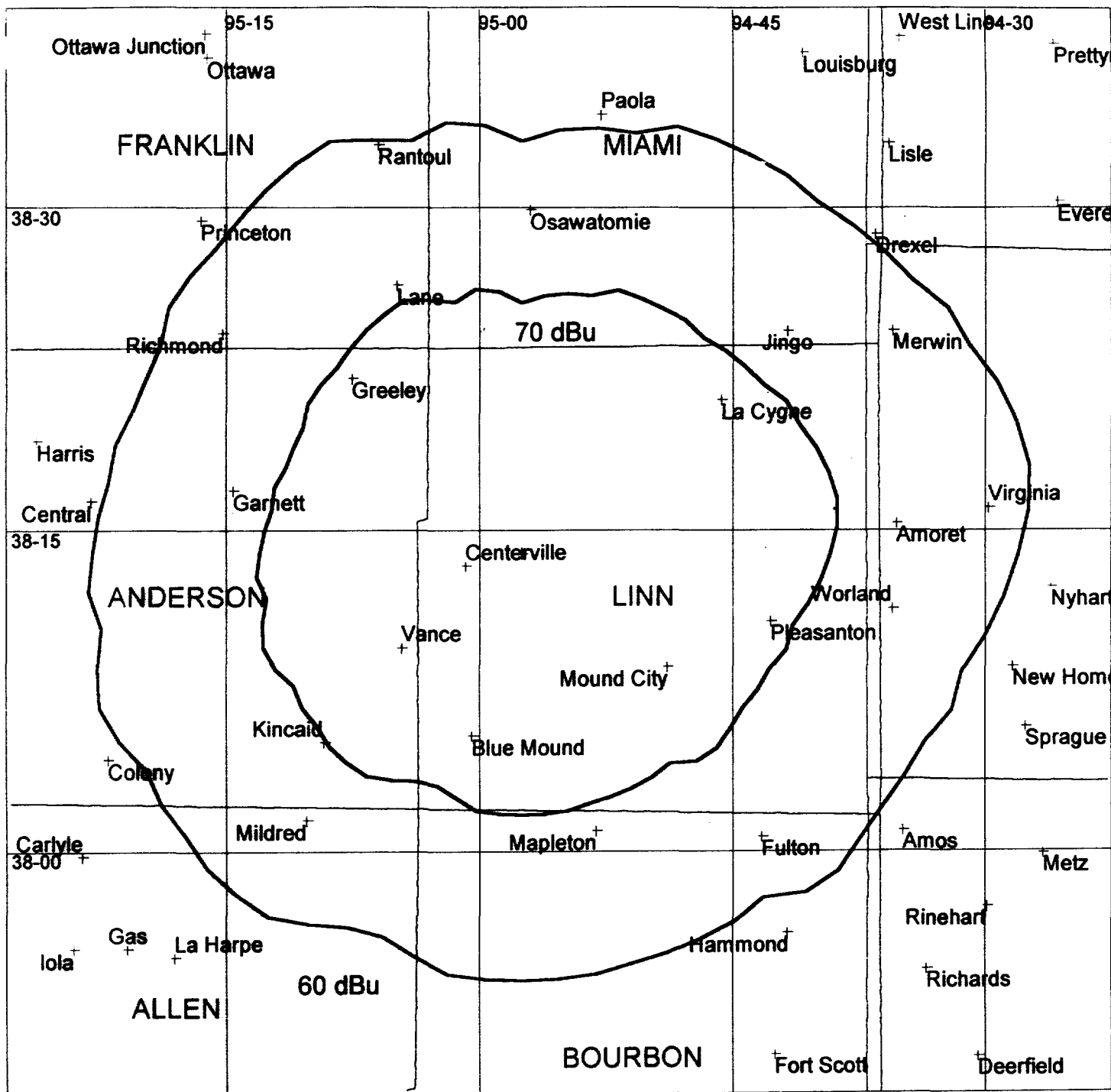
TABLE IV
ALLOCATION STUDY CHANNEL 229C3 PLEASANTON, KANSAS

APRIL 1998

Search of channel 229C3 (93.7 MHz), at N. 38 13 55, W. 94 57 30.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Kansas City	MO	227	C	U	95.5	96.0	24.3°	-0.5
KMXV	Kansas City	MO	227	C	L	95.5	96.0	24.3°	-0.5
ALC	Eureka	KS	228	A	U	125.4	89.0	248.8°	36.4
ALC	Parsons	KS	228	A	U	101.6	89.0	193.7°	12.6
K228CF	Emporia	KS	228	D	L	37.4	0.0	311.9°	37.4
KLKCFM	Parsons	KS	228	A	L	101.6	89.0	193.7°	12.6
KOTE	Eureka	KS	228	A	L	126.8	89.0	247.3°	37.8
ALC	Horton	KS	229	C3	U	157.8	153.0	349.0°	4.8
ALC	Salina	KS	229	C1	U	244.4	211.0	289.1°	33.4
KAIRFM	Horton	KS	229	C3	L	158.1	153.0	348.7°	5.1
KYEZ	Salina	KS	229	C1	L	238.9	211.0	286.4°	27.9
KYEZ	Salina	KS	229	C1	L	244.4	211.0	289.1°	33.4
ALC	Webb City	MO	230	C2	U	116.8	117.0	160.0°	-0.2
KJMK	Webb City	MO	230	C2	L	116.8	117.0	160.0°	-0.2
ALC	Kansas City	KS	231	C	U	95.5	96.0	24.3°	-0.5
KFKFFM	Kansas City	KS	231	C	L	95.5	96.0	24.3°	-0.5
ALC	Humboldt	KS	232	C3	V	82.2	43.0	219.9°	39.2
NEW	Humboldt	KS	232	C3	A	82.7	43.0	222.6°	39.7

FIGURE 1 - CHANNEL 229C3 PLEASANTON IOWA



Communications Technologies, Inc. Marlton, New Jersey APRIL 1998

Scale 1:500000

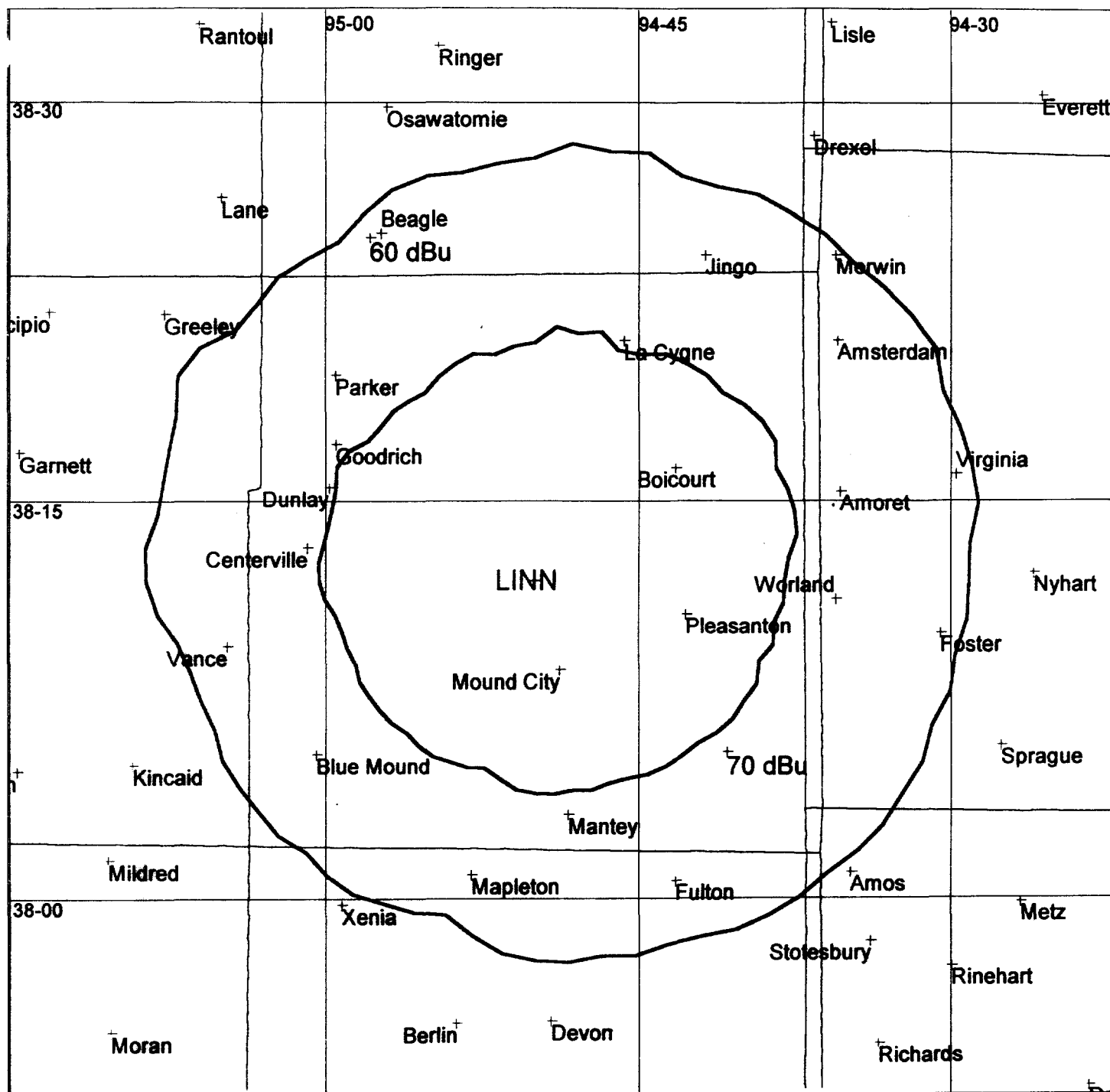
25 Km

— FM Service

— FM City Grade

— County Borders

- - - Lat-Lon Grids



Communications Technologies, Inc. Marlton, New Jersey APRIL 1998

Scale 1:410000

10 Km

— FM Service — FM City Grade — County Borders - - - Lat-Lon Grids

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~ Via Fax & Mail ~

September 14, 2000

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RE: **SHAWNEE BROADCASTING CORP. KWIC TOPEKA, KS**
RM-9212, MM DOCKET NO. 98-13

Dear Mr. McCombs:

In response to your request, we have checked the allocation situation, using the FCC FM database dated September 13, 2000, with the following results:

Proposed Allotment

CH 257C3 Topeka, KS
39-01-12, 95-41-25

CH 268A Iola, KS
37-54-04, 95-24-04

CH 241A Emporia, KS
38-24-21, 96-14-13

Status Check

Short to KIKS, CH 257A, Iola, KS
Short to KRWV, CH 258A, Emporia, KS
(Unchanged from Dec. 1997)

Short prop. CH 268C3
Pleasanton, KS

Clear

Mr. Hal McCombs, Esq.
September 14, 2000
Page 2

Proposed Alternative Allotments
for Pleasanton, KS

Status Check

CH 253A
38-10-00, 94-50-00

Clear

CH 229A
38-12-00, 94-50-00

Clear

CH 233A
38-11-20, 94-47-27

Clear

CH 229C3 (comments)
38-13-55, 94-57-30

Clear

CH 229C3
38-13-49, 94-57-14

Clear (Note: In FCC database - RM 9215)

Based on the analysis above, there are no allocation conflicts that would prevent the following changes in the Table of Allotments:

CH 257C3	Topeka, KS
CH 268A	Iola, KS
CH 241A	Emporia, KS
CH 229C3	Pleasanton, KS

Please feel free to call should questions arise.

Sincerely,


Clarence M. Beverage
CMB/es

cc: Joerg Klebe (via fax)

fc: McCombs.lfx

CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., hereby certify that I have caused to be served, by First Class Mail, postage prepaid, on September 18, 2000, a copy of the foregoing "Motion for Decision" on the following persons:

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